



CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION
CNPA Services, Inc.

2701 K Street Sacramento, CA 95816 ♦ Ph: 916.288.6000 ♦ Fax: 916.288.6002 ♦ www.cnpa.com

April 18, 2017

Honorable Rob Bonta
California State Assembly
State Capitol Room 2148
Sacramento, California 95814

RE: AB 1479 (SUPPORT)

Dear Assemblymember Bonta:

I am writing to you on behalf of the California Newspaper Publishers Association to express the Association's support of your AB 1479, which would create greater incentives for public agencies to comply with their duties under the California Public Records Act (CPRA).

Delay and other barriers to access in the production of records are commonplace. These unlawful acts which limit the public's constitutional right to access government records come in many forms, typically, an agency's failure to comply with the CPRA's stated deadlines, and attempts to charge exorbitant, unlawful fees which deter a requester from actually obtaining records. Even CNPA's members, who are some of the most sophisticated public records requesters, are given the runaround by agencies that want to withhold access without issuing an outright denial to a request.

For example, the *East Bay Times* made CPRA requests for records related to the Ghost Ship fire that occurred in December 2016. In a letter dated December 16, the City of Oakland promised to release records to the newspaper related to the incident. By February 2, 2017, the City had failed to produce the records responsive to the newspaper's request. The newspaper sent a lawyer's letter to the City, citing its protracted delay in responding to the request: "Given the gravity of this tragedy and the overwhelming public importance of access to records enabling the public to understand why it happened and to start to find solutions to prevent such occurrences in the future, the City's evident desire to control the message and delay the public's right of access during this critical time to the public's discourse on the matter is inexcusable."

The newspaper threatened to sue if the records were not released. As a result, more than 600 pages of records were promptly released.

The CPRA is structured to promote access to public records without delay, requiring that records be "promptly" produced. Gov. Code Section 6253(a). The legislature also directs trial courts reviewing CPRA litigation to reach a decision "as soon as possible" and then provides for expedited appellate review. Gov. Code Sections 6258, 6259. The procedures in the CPRA "reflect a clear legislative intent that the determination of the obligation to disclose records

Honorable Rob Bonta
Support AB 1479 (Bonta)
April 18, 2017
Page 2

requested from a public agency be made expeditiously.” *Filarisky v. Superior Court*, 28 Cal.4th 419, 427.) Moreover, the CPRA’s procedures exist to ensure that the disclosure of records is not delayed for months or years, as information becomes less newsworthy over time. See *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 111; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1335.

The CPRA was modeled after the federal Freedom of Information Act. In adopting the FOIA, Congress was specifically concerned that agencies would delay in responding to requests, and as a result “an agency’s failure to comply with the FOIA’s time limits is, by itself, a violation of the FOIA.” *Gilmore v. U.S. Dep’t of Energy*, 33 F.Supp.2d 1184, 1187 (N.D.Cal.1998); see also *Long v. IRS*, 693 F.2d 907, 910 (9th Cir.1982) (concluding that an agency’s unreasonable delay in disclosing non-exempt documents violated the FOIA and “courts have a duty to prevent those abuses”).

AB 1479 would adopt FOIA’s reasoning into the CPRA and provide a concrete mechanism for a requester enforcing the right of access in court to allege that the agency unreasonably delayed in producing the records.

AB 1479 also clarifies that an attempt to unlawfully recoup fees for the review and redaction of public records is a violation of the CPRA. Last year, an Alameda County judge found the same, ruling that a police department violated the CPRA by charging a requester \$3,247 for the time to review and redact information from body camera footage it produced, based on longstanding CPRA case law. See *North County Parents Org. v. Dep’t of Educ.* (1994) 23 Cal. App. 4th 144.

We applaud your effort to improve the CPRA’s enforcement provision and we look forward to working with you to obtain the Governor’s signature on AB 1479.

Sincerely



Nikki Moore
CNPA Legal Counsel

cc: Michelle Chantry, CNPA President, CEO, *The Bakersfield Californian*
Jeff Glasser, CNPA Governmental Affairs Chair, Vice President and Senior Counsel, *Los Angeles Times*
Thomas W. Newton, CNPA Executive Director
James W. Ewert, CNPA General Counsel
Alison Merrilees, Deputy Chief Counsel, Assembly Judiciary Committee
Paul Dress, Consultant, Republican Caucus